

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: BHARITKAR et al.
Title: SYSTEM AND METHOD FOR AUTOMATIC MULTIPLE LISTENER
ROOM ACOUSTIC CORRECTION WITH LOW FILTER ORDERS
Appl. No.: 10/700220
Filing Date: 11/3/2003
Patent No.: 7567675
Grant Date: 7/28/2009
Examiner: George C. Monikang
Art Unit: 2614
Confirmation Number: 3086

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 7/28/2009 as U.S. Patent No. 7567675.

The Patent Office determined that the patent was entitled to 732 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO

delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 978 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1026 days
(b) Total Applicant delay:	48 days
Final PTA Determination:	978 days

Applicants therefore respectfully request that the patent be accorded 978 days PTA.

The patent is not subject to a terminal disclaimer.

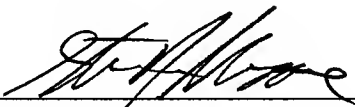
Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date 9-22-09

By 

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6733
Facsimile: (858) 792-6773

Steven A. Moore
Attorney for Applicant
Registration No. 55,462

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 095002-0102

Application Number: 10/700220

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/03/2003	0		
	14 month From Application date	01/03/2005	427		
	3 Year Period Starts	11/03/2006	1,096		
Edit Delete	Non-Final Office Action	02/22/2007	1,207	(780)	
CLOSE WINDOW	ALL CASES SELECT CASE Non-Final Office Action + 3 months	05/22/2007	1,296		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/09/2007	1,344		48
Edit Delete	Final Office Action	09/20/2007	1,417		
Edit Delete	Request For Continued Examination (including amendment)	10/26/2007	1,453	(357) 1026	
	3 Year Period Stopped	10/26/2007	1,453		
Edit Delete	Non-Final Office Action	01/10/2008	1,529		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/10/2008	1,620		
Edit Delete	Final Office Action	07/09/2008	1,710		
Edit Delete	Notice of Appeal Received at PTO	09/09/2008	1,772		
Edit Delete	Request For Continued Examination (including amendment)	11/07/2008	1,831		
Edit Delete	Notice of Allowance	02/06/2009	1,922		
Edit Delete	Issue Fee Paid	04/27/2009	2,002		
Edit Delete	Patent Grant Date	07/28/2009	2,094		
			Totals:	1,026	48
			PTA:	978	

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IP: 10.6.2.97

Foley & Lardner LLP